



Commonwealth  
of Massachusetts

## *OCPF Online*

*www.mass.gov/ocpf*

*Office of Campaign and Political Finance*

*One Ashburton Place, Room 411*

*Boston, MA 02108*

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### Advisory Opinion

August 13, 2004

AO-04-11

Tom Gerace  
1280 Washington Street, PH  
Boston, MA 02118

Re: Internet Website

Dear Mr. Gerace:

This letter is in response to your request for an opinion regarding the extent to which, under the campaign finance law, a group may host a website to enable individuals to donate money directly to candidates, PACs and organizations that support a common issue.<sup>1</sup>

You represent a group of individuals interested in promoting marriage rights through a website called SupportEquality.org. The website is intended to be a resource for individuals interested in learning about the issue, and in contributing to political candidates, committees and non-profit organizations that support the issue. In addition, the site will make recommendations to contributors as to which candidates, PACs, or other organizations, in the group's opinion, are in most need of support. You have explained it as follows:

Our website would be a resource to citizens that do not have the time or access to information to determine which candidates, PACs, or social welfare organizations (501(c)(4)) are in a position to have an impact on the cause in question and to keep an up-to-date list of those most in need of resources. We have gathered and intend to continue to gather this information through original research and by interviewing these candidates and organizations and evaluating each against the others.

A citizen visiting our site would be able to learn about some or all of the candidates and organizations that we believe are worthy of support. If interested, that citizen could then provide a total amount of money that

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<sup>1</sup> This opinion is intended only to address contributions solicited and received on behalf of candidates and political committees. Contributions to other entities, such as educational or non-profit organizations are not within OCPF's jurisdiction.

she is prepared to donate to the cause via that website. We would then provide a listing of those candidates and organizations that most need help now, with recommendations for how to divide her total potential contribution among them.

The citizen could then change any amounts recommended, remove donations from candidates or organizations that she does not want to support, or alter her total potential donation on our website. Once she is satisfied with her list of donations, she could use our site to enter her contact and credit-card information in a single place. She could then instruct our site to electronically transmit the specified donations from the citizen's credit card to the merchant banks for each candidate, PAC, or educational organization the citizen has selected. Our website would confirm that her donations had been received by each ... merchant bank.

In order to achieve the foregoing, SupportEquality.org would necessarily be coordinating efforts with the political committees that are supported on the site because, as described, it will be the candidates' and committees' respective merchant banks that will be processing incoming contributions as they are received. In other words, SupportEquality.org would only be soliciting and facilitating the making of contributions on behalf of candidates and political committees that have already directly contracted with merchant banks, in accordance with the campaign finance law and regulations, to accept Internet credit card contributions.

Typically where a candidate or committee has contracted with a merchant bank to accept Internet credit card contributions, the solicitation occurs through a campaign website created and maintained by the candidate or committee. From this site, certain required information is collected from a potential contributor on a secured server, usually maintained by the merchant provider. The transaction is then processed by the merchant provider and the proceeds of the contributions are deposited directly into the committee account.

Through SupportEquality.org, the required contributor information would be collected a single time on that website even when a contributor demonstrates an intent to contribute to more than one candidate or political committee. Upon a command from the contributor, SupportEquality.org will instantly and simultaneously transmit the required contributor information and the amount of the intended contribution to the merchant provider of the relevant candidate(s), PAC(s) and/or 501(c)(4) organization(s). Each of the campaigns' merchant providers will then separately process the credit card contribution for the respective candidate(s) or committee(s) in the ordinary course of business.

The individuals involved in creating SupportEquality.org are doing so purely on a volunteer basis. You have stated that the costs associated with the site include a one-time start-up fee of \$19 and a web-hosting fee of \$21.95 per month. You plan on paying these costs directly using personal funds. The group does not otherwise plan on soliciting or receiving funds, or spending any money to publicize the website. You have indicated that you hope to get the word out about the site through e-mails to friends, family and other contacts.

QUESTION I

May SupportEquality.org facilitate the receipt of credit card contributions by candidates and committees in the manner described above?

ANSWER I

Yes, since credit card contributions will not actually be processed by or otherwise received by SupportEquality.org. The political committees involved with SupportEquality.org have already contracted with merchant providers to accept Internet credit card contributions. Therefore, such contributions may be solicited through the SupportEquality.org website (processed and received by the campaigns), as long as the site itself conforms to 970 CMR 1.09(2)(b), the campaign finance regulations governing web sites that solicit Internet credit card contributions.

Subject to the applicable limitations, candidates and political committees may accept contributions from individuals by credit card. Campaign finance regulations at 970 CMR 1.09 govern this activity. Among other things, these regulations set forth the criteria for web sites that solicit political contributions. Specifically, the sites must: (1) set forth appropriate questions, which require an affirmative response from a contributor, to determine that the source and amount of the contribution complies with M.G.L. c. 55 and 970 CMR 1.09; (2) clearly identify the name of the candidate or committee involved in the solicitation; (3) require a contributor to certify with an affirmative action that the contributor is responsible for making payments on the credit card and that the contributor's personal funds will be the true source of the contribution as required by M.G.L. c. 55, § 10; and (4) clearly distinguish between required and optional information collected. In addition, each contributor must promptly receive an e-mail confirmation of the contribution from the campaign. See 970 CMR 1.09(2)(b).

As stated above, political contributions may be solicited and received via SupportEquality.org provided that the website conforms to these requirements.

QUESTION II

Does SupportEquality.org need to organize a political committee in order to solicit Internet contributions on behalf of candidates and committees in the manner described above?

ANSWER II

No. Based on the scenario you have provided on how this website will be established and maintained, SupportEquality.org would appear to be functioning as an agent of the political committees involved with the website, rather than a PAC because political contributions will not be solicited or received by SupportEquality.org on its own behalf to influence any Massachusetts elections.

The Massachusetts campaign finance law defines a political committee as any:

committee, association, organization or other group of persons, including a national, regional, state, county or municipal committee, which receives contributions or makes expenditures for the purpose of influencing the nomination or election of a candidate, or candidates... or for the purpose of opposing or promoting a charter change, referendum question, constitutional amendment, or other question submitted to the voters.

In IB-88-01, this office narrowed the definition of “political committee” to include only groups that *raise money to influence Massachusetts elections and subsequently expend those funds to influence Massachusetts elections*. Therefore, any organization or group which solicits or receives any money or any other thing of value to influence the election of a Massachusetts state, county or municipal candidate, or to favor or oppose a Massachusetts local ballot question is acting as a political committee and is subject to the campaign finance law as of the date of the solicitation or receipt of funds.

You have indicated that SupportEquality.org will not be soliciting or receiving any money on its own behalf to influence Massachusetts elections or to otherwise fund or advertise the site. The site was created exclusively through volunteer efforts, and no money will be spent on advertising. The only costs involved with the site, the \$19 start-up fee and \$21.95 monthly web hosting fee, are to be paid by you personally. Given the foregoing, it does not appear that the group will be functioning as a political committee as defined by the statute and OCPF’s Interpretive Bulletin. As such, there is no need for SupportEquality.org to organize a PAC.

### QUESTION III

Is SupportEquality.org providing a “contribution” to the political committees involved with the website by using the site to solicit Internet credit card contributions on their behalf?

### ANSWER III

No. Based on the facts you have provided, SupportEquality.org was created and will be maintained through the efforts of volunteers who have provided their services to create a website for the purpose of educating the public regarding marriage rights and to raise funds for candidates, political committees, and other organizations that support marriage rights.<sup>2</sup> To the extent that the only costs associated with the site have been incurred incidentally to the provision of such personal services, they do not amount to a “contribution” for the purposes of the campaign finance law.

Voluntary work provided by an individual on his or her own time to promote a candidate or political committee, and any expenses incidental thereto is not a “contribution” for the purposes of the campaign finance law. Instead, it is a “personal service” provided to the candidate or committee. See M.G.L. c. 55, § 1, which excludes from the definition of “contribution,” “the rendering of services by speakers, editors, writers, poll watchers, poll checkers or others, [and] the payment by those rendering

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<sup>2</sup> This is important because, as discussed, personal services do not qualify as campaign contributions. OCPF’s position on this issue would change if the individuals who participated in the development of SupportEquality.org were being paid or otherwise compensated by another entity for their service.

such services of such personal expenses as may be incidental thereto.” See AO-01-22 (legal services provided to a campaign by an attorney on his own time was not a contribution) and AO-00-18 (no contribution results where an artist provides work to a candidate committee for a fundraising auction).

OCPF has previously advised that the rendering of personal services to a campaign could include web design services. In IB-04-01, we stated:

[C]andidates and committees may accept an individual’s voluntary “personal services” to develop a website. Such services and the incidental expenses related to the rendering of such services are not contributions within the meaning of the statute and, therefore, need not be listed on a campaign finance report. For example, a person who uses his own computer to assist a campaign or who provides a personal service to a candidate by designing or administering a website, and is not otherwise compensated by another individual or entity for the time spent while doing this activity, is not providing a “contribution.” See M.G.L. c. 55, § 1.

Although OCPF’s previous advice has been in the context of personal services to design a campaign website for a single candidate, the same rationale would apply here where individuals are providing personal services to simultaneously promote a number of campaigns based on a common issue.

Technology is such today that it is possible for a fundraising website, like SupportEquality.org, to be created purely through the efforts of volunteers, most of whom incur no cost at all. You have personally assumed the responsibility for the minimal costs involved in hosting the website, which is necessary to make the site available to the public. Making a site widely available on the web is, after all, the purpose of its development. Given that web hosting is such an integral component of SupportEquality.org’s development, the resulting costs should be construed as being incidental to the personal services you provided to make SupportEquality.org happen. Consequently, these costs would not amount to “contributions” from either you or SupportEquality.org to the candidates involved in the site.

This opinion is issued within the context of the Massachusetts campaign finance law and is provided solely on the basis of representations in your letter and in conversations with OCPF’s staff. Please contact us if you have further questions regarding this opinion or any other campaign finance issue.

Sincerely,

A handwritten signature in dark ink, reading "Michael J. Sullivan", is written over a horizontal line.

Michael J. Sullivan  
Director